



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 200, 282, and 283 (as enacted)
House Bill 4367 (as enacted)
Sponsor: Senator Paul Wojno (S.B. 200)
Senator Curtis S. Vanderwall (S.B. 282)
Senator Peter J. Lucido (S.B. 283)
Representative Jason M. Sheppard (H.B. 4367)
Senate Committee: Health Policy and Human Services
House Committee: Government Operations

PUBLIC ACTS 36-38 of 2019
PUBLIC ACT 39 of 2019

Date Completed: 7-10-19

RATIONALE

According to the National Institute on Drug Abuse, opioid abuse and addiction is a serious national crisis related to public health and social and economic welfare. More than 130 people die every day in the United States from opioid overdoses. In Michigan, a 2015 report from the Prescription Drug and Opioid Abuse Task Force indicated that the number of drug overdose deaths in the State had more than tripled since 1999, and that, in 2015, the State ranked 15th in the nation for drug overdose deaths. The World Health Organization reports that opioid overdoses are preventable with the timely injection of opioid antagonists such as naloxone, an injectable and auto-injectable antagonist approved by the Food and Drug Administration. Antagonists effectively block opioid receptors, preventing the body from responding to the opioids and associated endorphins.

Evidently, many of those who are addicted to opioids seek out places to fulfill their addictions, which results in overdoses occurring in public buildings, such as libraries. Considering the efficacy of timely opioid antagonist injections in preventing overdoses and the prevalence of opioid overdoses occurring in public spaces, some believe that opioid antagonists should be prescribed and distributed broadly. Accordingly, it has been suggested that the Legislature enacts legislation to allow certain agencies and their employees to distribute and administer opioid antagonists to prevent overdoses.

CONTENT

House Bill 4367 creates the "Administration of Opioid Antagonists Act" to do the following:

- Allow a governmental agency to purchase and possess an opioid antagonist, and to distribute it to an employee or agent.
- Allow an employee or agent to administer an opioid antagonist to an individual, if he or she has been trained in the administration of an opioid antagonist and has reason to believe that the individual is experiencing an opioid-related overdose.
- Exempt from civil liability an agency that purchases, possesses, or distributes an opioid antagonist, and an employee or agent who possesses or in good faith administers an opioid antagonist, if the conduct does not amount to gross negligence.
- Exempt from criminal prosecution an agency that purchases, possesses, or distributes an opioid antagonist, and an employee or agent that possesses or in good faith administers an opioid antagonist.

Senate Bill 200 amends the Public Health Code to allow a prescriber to issue a prescription for, and allow a dispensing prescriber or pharmacist to dispense an opioid antagonist to an employee or agent of an agency authorized to purchase, possess, and distribute an opioid antagonist for the purposes of the Administration of Opioid Antagonists Act.

Senate Bill 282 amends the Public Health Code to modify a provision requiring a medical control authority to develop and adopt protocols defining the process, actions, and sanctions it may use in holding a life support agency or personnel accountable to refer instead to "emergency medical services personnel".

Senate Bill 283 amends the Revised School Code to delete language that exempts a school employee from criminal action or civil damages as a result of an act or omission in the administration of an opioid antagonist under certain circumstances.

House Bill 4367 also repeals Public Act 462 of 2014, which allows law enforcement agencies and peace officers to possess and administer opioid antagonists under certain circumstances.

The bills will take effect on September 24, 2019. Senate Bills 200 and 283, and House Bill 4367 are discussed in further detail below.

House Bill 4367

Definitions

"Opioid antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the United States Food and Drug Administration for the treatment of drug overdose.

"Agency" means a governmental agency. "Governmental agency" means the State or a political subdivision, and does not include a person licensed under Part 209 (Emergency Medical Services) of the Public Health Code.

"Political subdivision" means a municipal corporation, county, county road commission, school district, community college district metropolitan district, or transportation authority or a combination of two or more of these when acting jointly; a district or authority authorized by law or formed by one or more political subdivisions; or an agency, department, court, board, or council of a political subdivision.

"State" means the State and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces. The term would include a public university or college of the State, whether established as a constitutional corporation or otherwise.

Opioid Antagonist; Possession & Distribution

The Act allows an agency to purchase and possess an opioid antagonist and to distribute it to an employee or agent who has been trained in the administration of that opioid antagonist.

An employee or agent may possess an opioid antagonist distributed to him or her, and may administer that opioid antagonist to an individual if both of the following apply:

- The employee or agent has been trained in the proper administration of the opioid antagonist.
- The employee or agent has reason to believe that the individual is experiencing an opioid-related overdose.

"Employee or agent" means any of the following:

- An individual who is employed by, or under contract with, an agency.
- An individual who serves on the governing body of an agency.
- An individual who volunteers with an agency.

"Opioid-related overdose" means a condition, including extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death, that results from the consumption or use of an opioid or another substance with which an opioid was combined or that a reasonable person would believe to be an opioid-related overdose that requires medical assistance.

Immunity from Civil Liability or Prosecution

An agency that purchases, possesses, or distributes an opioid antagonist, and an employee or agent who possesses or in good faith administers an opioid antagonist, is immune from civil liability for injuries or damages arising out of the administration of that opioid antagonist to an individual if the conduct does not amount to gross negligence that is the proximate cause of the injury or damage, and is not subject to criminal prosecution for purchasing, possessing, or distributing an opioid antagonist or for administering it to an individual.

"Gross negligence" means that term as defined in the governmental immunity law: conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

The bill also specifies that any immunity provided under the proposed Act is in addition to any immunity otherwise provided by law.

Senate Bill 200

The Public Health Code, notwithstanding any provision to the contrary, allows a prescriber to issue a prescription for and a dispensing prescriber or pharmacist to dispense an opioid antagonist to various individuals and entities, including the following:

- An individual patient at risk of experiencing an opioid-related overdose.
- A family member, friend, or other individual at risk of experiencing an opioid-related overdose.

The Code also allows a prescriber to issue a prescription for and a dispensing prescriber or pharmacist to dispense an opioid antagonist to a school board for purposes of Section 1179b of the Revised School Code. The bill deletes this provision. (Section 1179b of the School Code allows a school board to require, in each school it operates, that there are at least two employees who have been trained in the appropriate use and administration of an opioid antagonist. If the school board does so, it must develop and implement a policy relating to the possession and administration of an opioid antagonist.)

The bill includes in the list of individuals and entities to whom an opioid antagonist may be prescribed an agency authorized to purchase, possess, and distribute an opioid antagonist under the Administration of Opioid Antagonists Act.

The Public Health Code requires that, when issuing a prescription for or dispensing an opioid antagonist to a school board or a person other than a patient, the prescriber, dispensing prescriber, or pharmacist, as appropriate, insert the name of the school board or the person as the name of the patient. The bill deletes the reference to a school board. Instead, under the bill the prescriber, dispensing prescriber, or pharmacist, if he or she is issuing or dispensing the opioid antagonist to an agency authorized to purchase, possess, and distribute an opioid antagonist as described above, must insert the name of the agency as the name of the patient.

Additionally, the Code specifies that, notwithstanding any provision to the contrary, a school employee who is a licensed registered professional nurse or who is trained in the administration of an opioid antagonist under Section 1179b of the Revised School Code may possess and administer an opioid antagonist dispensed to a school board. The bill deletes this section. Instead, the bill

specifies that, notwithstanding any provision to the contrary, an employee or agent of an agency authorized to purchase, possess, and distribute an opioid antagonist as described above, may possess, and administer an opioid antagonist dispensed to the agency.

Senate Bill 283

Under the Code, a school administrator, teacher, or other school employee designated by the school administrator, who in good faith administers medication to a pupil in the presence of another adult or in an emergency that threatens the life or health of the pupil, pursuant to written permission of the pupil's parent or guardian, and in compliance with the instructions of a physician, physician's assistant, or certified nurse practitioner, or a school employee who in good faith administers an epinephrine auto-injector to an individual consistent with the policies under Section 1179a, or in good faith administers an opioid antagonist to an individual consistent with the policies under Section 1179b, is not liable in a criminal action or for civil damages as a result of an act or omission in the administration of the medication, epinephrine auto-injector, or opioid antagonist except for an act or omission amounting to gross negligence or willful and wanton misconduct.

Also, the above provision applies to a school employee regardless of whether the medication, auto-injector, or opioid antagonist is administered in the presence of another adult, if the employee is a licensed registered professional nurse.

The bill deletes the provisions pertaining to the administration of an opioid antagonist. The bill also deletes the definitions of "opioid antagonist" and "opioid-related overdose".

The bill repeals Section 1179b of the Revised School Code, which allows a school board to require, in each school it operates, that there are at least two employees who have been trained in the appropriate use and administration of an opioid antagonist.

MCL 333.17744b (S.B. 200)
333.20919 (S.B. 282)
380.5 & 380.1178 (S.B. 283)

BACKGROUND

The Michigan Legislature has enacted policies to attempt to prevent opioid overdoses in previous sessions. In 2014, Public Acts 311 through 314 amended the State's Good Samaritan Laws and the State's Public Health Code pertaining to civil liability and the administration of opioid antagonists. The Acts allow a prescriber to issue, and a dispensing prescriber or pharmacist to dispense, an opioid antagonist to an individual at risk for an opioid-related overdose; a family member, friend, other individual in a position to assist an individual at risk of an opioid-related overdose; or person other than an individual who met certain requirements. The Acts extended civil liability protection to an individual administering an opioid antagonist in good faith under the State's Good Samaritan Law. Also in 2014, Public Act 462 permitted State and local law enforcement agencies to purchase opioid antagonists and distribute them to their officers. The Act extends civil liability protections to a properly trained officer who acts in good faith in response to a perceived opioid overdose.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Committee on Health Policy and Human Services, some public places, such as libraries in the Battle Creek, East Lansing, Grand Rapids, Muskegon, and Kalamazoo areas, have become frequented locations for opioid users. Consequently, those places have seen a high number of opioid overdoses because they offer relative anonymity and generally

allow patrons to remain at the location for long periods of time. Law enforcement often responds first to these opioid overdoses, and many officers carry opioid antagonists for these instances. In the case of opioid overdoses, however, a quick response is necessary. Often, by the time law enforcement officers with opioid antagonists reach a person having an opioid overdose, it is too late.

For example, some libraries have had patrons experience overdose fatalities when first responders could not arrive immediately on the scene of an opioid overdose. The libraries, as a result of those experiences, have trained their staff in the use of opioid antagonists and have distributed the antagonists to employees for use in the library. In the hands of employees, naloxone could save the life of a person experiencing an opioid overdose. For example, The National Institute on Drug Abuse reports that between 1996 and 2014, bystanders reversed at least 26,500 opioid overdoses in the United States by administering naloxone. However, legal counsel for many libraries have recommended that libraries not stock nor administer opioid antagonists because of liability concerns that could arise as a result of the administration of the antagonist. These concerns prevent employees from saving lives. The Administration of Opioid Antagonists Act will allow agencies to purchase, and employees of these agencies to administer, opioid antagonists potentially to save lives in the crucial seconds of an opioid overdose.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

House Bill 4367

The bill will have no direct fiscal impact on the State or local governments because it allows, rather than requires, agencies to have employees trained to administer opioid antagonists. Agencies that opted to purchase and use opioid antagonists as allowed under the bill may incur supply and training costs. The bill's immunity provisions may reduce the number of prosecutions and convictions for possession or administration of controlled substances by employees or agents, thus potentially reducing court and corrections costs and costs of litigation for an agency that chooses to purchase and possess opioid antagonists and train agents or employees in the administration of opioid antagonists.

Senate Bill 200, 282, & 283

The bills will have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.